

2171 120th Avenue
Kinsley, Kansas 67547
February 21, 2018

Box 242
Kinsley, Kansas 67547

Mr. Orrin Feril, Manager
GMD # 5
125 South Main Street
Stafford, Kansas 67578

Dear Orrin and the GMD # 5 Board,

RE: Comments on the Rattlesnake Creek LEMA

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FEB 28 2018

Big Bend GMD #5

1. Overall, we feel that the LEMA proposal that we have in hand is a good solution to the Quivira NWR Impairment, but mostly because we see no other good alternatives.
2. There is a notion going around that you just take your end gun off, and automatically 19,000 acre feet in savings gets added back to our aquifer.....in other words, no further action required. We do not agree with this. The 19,000 acre-feet is achieved by water use management using pivots that no longer have end guns.
3. It is critical to start right now in planning what each farm can do to hit this goal, rather than wait until close to the deadline, as then it will be too late. Action taken now by our farm and others will make sure that the second 5 years is just "more of the same" and not additional regulation by the Chief Engineer. Of course, it also depends on how successful the programs developed for Zone D are as well, but that is an unknown at the outset.
4. Seems to us that the most important part of the LEMA statute language is KSA 82a-1041 (4), which reads the LEMA "gives due consideration to water users who already have implemented reductions in water use resulting in voluntary conservation measures". For example, if we do a WCA on our farm that results in a reduction of, say 10 %, in water use over the next 5-7 years, and we start this year, is there any language that says that we would be exempt from further regulation starting in 2025? Any type of plan like this will result in an economic harm to our farm, and it is really hard to consider these types of programs if there is not some type of exemption from further regulation down the road. We are asking that however you are going to handle this is stated clearly for all irrigators right now, so that proper analysis and action can be taken. Otherwise, it will be difficult to overcome the "business as usual" mind-set.
5. Once a producer plants an irrigated crop, it is a given that there is a commensurate thought that the producer will apply the water necessary to bring the crop to full production for economic gain. Therefore, the producer can plan water use potential in advance by looking at various cropping plans for his whole farm, and choose crops that will not result in overwatering or missing his goal for water use. Of course, there can be water savings from operational techniques such as irrigation scheduling to minimize the irrigation pumping, but the point is that once the crop has been planted, the "die has been cast" on potential irrigation amount exposure.
6. Need to define clearly what is or is not an end gun.....people are already thinking about putting 2 end guns at the end of the pivot; one at the end of the regular boom and one in the end gun position to get around the "nozzle no larger than the last nozzle on the pivot" idea.
7. In the LEMA area, what is to be the fate of the water accumulated in the safe deposit boxes that was placed there by prudent water management?
8. Buyouts of water rights in the Zone D will be the best way to achieve the 4,000 AF reduction. Moving water somewhere else through the water bank creates problems in moving water across basin

boundaries, and creating potential impairments in other areas. It may be possible to move water out of Zone D and into areas in the lower RSC Sub-Basin, but would take careful hydrological analysis to make sure that the resulting situation would not be worse after the move.

9. If you take off 1,306 end guns to gain 19,000 acre-feet of aquifer improvement, this calculates to around 14.5 acre-feet of water saved per center pivot after the end gun is taken off (or 9.75 AF of water savings needed per pivot considering all of the points of diversion). The trick is how to capture this 14.5 AF (or 9.75 AF). Maybe this is a subject for your water management seminars. The people who have already taken off their end guns, approximately 642 center pivots, should also be expected to capture water savings.....how are they to be treated in all of this? Several I have talked to think they need no further actions in water use savings as they have already complied with the solution in the LEMA!
10. Smaller water rights: should they be treated equally in water use reduction schemes or unequally because of their smaller perfected quantity. Our opinion is that these smaller perfected water rights should be included with other fully perfected rights in any contemplated pumping reduction scheme. Those owners of these smaller rights are well aware of the perfected amounts, because they were originally perfected with less than full amounts of water quantity (for whatever reason), or perhaps the owner bought the right as-is, and the price of this property was therefore most likely discounted (especially in the last 10 years or so). These owners and tenants are used to managing the cropping rotations with the water rights as-is. Any tinkering of this sort decreases the value of a normal water right, while increasing the value of the "short" water right. Is this what the GMD intends to do? Not a good idea.
11. In the LEMA scenario, the priority system and the MDS wells potential restrictions have essentially been intentionally bypassed, except in the case of water rights with numbers lower than that of the Quivira NWR. While this is of concern to many, it is extremely problematic to pick and choose the water rights in the LEMA area that are most effective in solving the impairment when using the priority system. This would most likely cause unending court cases and challenges, and would not solve the impairment.
12. When considering wells in zone D that are candidates for water rights buyouts, a system must be developed that would pay a premium for water rights with the highest historical use values in order to have maximum positive effect on the RS Creek. While this is not always possible, it should nevertheless be the goal. The dollars required for this need to come from additional sources from the balance of the producers in the LEMA area.
13. Whatever schemes are developed, it is imperative that the water rights are left whole in pumping rate, quantity and priority. Any attempt to reduce water rights by regulation is an uncompensated taking, and should be (and will be) defended in court.
14. What about lengthening the pivot after the end gun has been removed? This is bound to come up. Any lengthening idea is probably not very feasible (since not much could be added to the length) because the pivot cannot cross property boundaries or stick out on roads.

Let us know if any of the above needs further amplification or comment from us.

Thanks for the opportunity to weigh in.

Sincerely,

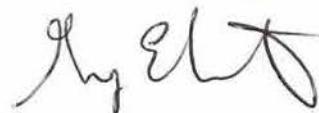


Richard J. Wenstrom, Manager
Wenstrom LLC

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FEB 28 2018

Big Bend GMD #5



Greg Ebert, Owner
Ebert Farms